

LA307-008807051-0007 218A-50200-HP DJC/ced
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMAL R. WASHINGTON, as the Administrator of
the Estate of FRANCES DELANCEY WASHINGTON
and PAUL WASHINGTON, SR.,

ANSWER TO COUNTERCLAIM

Index No.: 08 CIV 4566 (LAK)

Plaintiff(s),

Trial By Jury Demanded

-against-

NATIONAL FREIGHT INC. and JOSEPH M. BOOR,
JR.,

Defendant(s).

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Plaintiff on the counterclaim, JAMAL R. WASHINGTON, AS THE ADMINISTRATOR
OF THE ESTATE OF FRANCES DELANCEY WASHINGTON, appearing by ROBIN,
HARRIS, KING & FODERA, attorneys, answering the counterclaim of defendant NATIONAL
FREIGHT INC., herein, alleges.

1. Denies each and every allegation contained in the unnumbered paragraphs
designated as the counterclaim contained in defendant National Freight Inc.'s answer.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
IT IS ALLEGED UPON INFORMATION AND BELIEF:**

2. That the injuries and damages, if any, alleged to have been sustained by
defendants were caused, in whole or in part, by the culpable conduct of defendants.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
IT IS ALLEGED UPON INFORMATION AND BELIEF:**

3. The defendants' counterclaim is barred by and in contravention of Insurance Law
§5102 in that plaintiff Paul Washington, Sr., is a covered persons and in any action by or on
behalf of a covered person against another covered person for personal injuries arising out of
negligence in the use or operation of a motor vehicle in this state, there shall be no right of

recovery for non-economic loss, except in the case of a serious injury, or for basic economic loss.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
IT IS ALLEGED UPON INFORMATION AND BELIEF:

4. That the injuries and damages allegedly sustained by the parties, if any, were contributed to or caused by the failure of said Paul Washington, Sr., to use the seat belt and other safety restraining equipment provided in the motor vehicle.

WHEREFORE, plaintiff on the counterclaim, JAMAL R. WASHINGTON, AS THE ADMINISTRATOR OF THE ESTATE OF FRANCES DELANCEY WASHINGTON demands judgment dismissing the counterclaim of defendant NATIONAL FREIGHT INC. herein, or in the alternative, apportioning the liability between all parties, together with the costs and disbursements of this action.

Dated: New York, New York
July 21, 2008

Yours, etc.,

By: /s/
DOREEN J. CORREIA (DJC/3075)
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TO:

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